



**Attorney General
Betty D. Montgomery**

June 26, 1996

Via Federal Express

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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Re: *In the Matter of the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128*

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton

Enclosed please find the original and twelve copies of the Comments of the Public Utilities Commission of Ohio in the above-referenced matter. Please return a time-stamped copy to me in the enclosed, self-addressed, postage-prepaid envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

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□ 3. ALTERNATIVE OPERATOR SERVICES

The following applies to the provision of alternative operator services (AOS) (See also Case No. 88-560-TP-COI):

Preceding the maximum operator-assisted surcharges set forth in the text of the tariff, as well as preceding the operator-assisted surcharges set forth in the price list attached to the tariff, the NEC must insert a statement which specifies whether the rates as set forth apply to the provider's provision of traditional operator services, AOS, or both.

a. Definitions

- i. AOS are those services provided by the NEC in which the customer and the end user are totally separate entities. The NEC contracts with the customer to provide the AOS; however, the NEC does not directly contract with the end user to provide the services even though it is the end user who actually pays for the processing of the operator-assisted calls.
- ii. Traditional operator services are those services provided by the NEC in which the end user has a customer relationship with the NEC, the NEC contracts with the customer/end user to provide the services, and the customer/end user pays for the actual processing of the operator-assisted calls.

b. AOS Service Parameters

- i. For local operator-assisted calls, NECs providing AOS shall not charge the billed party more than the incumbent local exchange company (ILEC) price list rates for a local operator-assisted call in the same exchange. This requirement includes both the rates for MTS and operator surcharges.
- ii. For intraLATA, intrastate calls, the NECs providing AOS to secured facilities shall not charge the billed party more than the ILEC price list rates for an intraLATA, intrastate call. This requirement includes both the rates for MTS and operator surcharges. This requirement is only applicable in those situations where the billed party does not have access to other operator service providers (OSPs) for the call from the secured facility.

Provider's Name:

Case No. ____-____-TP-____

Case No. ____-____-TP-TRF

Issued: (Date Filed)

New Year's Day, Independence Day, Labor Day, Thanksgiving, and Christmas. Furthermore, the "night/weekend" discount plus an additional discount equivalent to no less than ten percent of the company's current, price list, "day" rates for basic MTS shall be made available for intrastate, interexchange, customer-dialed, station-to-station calls placed during the "night/weekend" period any day, the "day" period Sunday, and all day Saturday.

- d. All MTS calls placed through the telecommunication relay service (TRS) are eligible to receive a discount off the MTS rates. The rate discounts are the same as those set forth in paragraph 1.c. preceding. The discount shall not apply to sponsor charges associated with calls placed to pay-per-call services, such as 900, 976, or 900-like calls.

☐ 2. EMERGENCY SERVICES CALLING PLAN

Applicable to all NECs offering MTS (See also Case Nos. 85-1466-TP-COI and 89-54-TP-COI):

Message toll telephone calls, to governmental emergency service agencies as set forth in (a) following, having primary or principal responsibility with respect to the provision of emergency services to persons and property in the area from which the call is made, meeting the definition and criteria of an emergency call as set forth in (b) following, are offered at no charge to customers:

- a. Governmental fire fighting, Ohio State Highway Patrol, police, and emergency squad service (as designated by the appropriate governmental agency) qualify as governmental emergency service agencies provided they answer emergency service calls on a personally attended (live) 24-hour basis, 365 days a year, including holidays.
- b. An emergency is an occurrence or set of circumstances in which conditions pose immediate threat to human life, property, or both, and necessitate that prompt action be taken. An emergency call is an originated call of short duration to a governmental emergency service agency in order to seek assistance for such an emergency.

- iii. For intraLATA and interLATA, intrastate calls, NECs providing AOS must apply one of the following MTS price ceilings to the MTS provided in conjunction with AOS (see also Case No. 89-563-TP-COI):

<u>Mileage Band</u>	<u>Initial Minute</u>	<u>Each Additional Minute</u>
1 - 10	.32	.16
11 - 22	.40	.22
23 - 55	.48	.28
56 - 124	.57	.37
125 - end	.58	.39

or;

\$.36 per minute of use

This rule does not apply to the provision of intraLATA, intrastate calls from secured inmate facilities where there is no access to other OSPs; the rates for those types of calls are addressed in Attachment C, 3.B.i. and ii., above.

- iv. For intraLATA and interLATA, intrastate calls, each NEC's maximum interexchange operator-assisted AOS rates shall be no more than:
- i. \$1.70 for customer-dialed calling card calls;
 - ii. \$2.50 for operator-handled calls; and
 - iii. \$4.80 for person-to-person calls.

This rule does not apply to the provision of intraLATA, intrastate calls from secured inmate facilities where there is no access to other OSPs; the rates for those types of calls are addressed in Attachment C, 3.B.i., above.

- v. Notice of any change in the rates stated in Attachment C, 3.B.i. through iv., above, whether it be upward or downward, must be filed by the OSP with the Commission in the form of a new price list, on or before the effective date in accordance with Commission-established filing rules.

☐ 4. LIMITATION OF LIABILITY

The following is applicable to all NECs that choose to include in their tariffs language which may limit their liability (See also Case No. 85-1406-AU-COI):

Approval of limitation of liability language by the PUCO does not constitute a determination by the Commission that the limitation of liability imposed by the company should be upheld in a court of law. Approval by the Commission merely recognizes that since it is a court's responsibility to adjudicate negligence and consequent damage claims, it is also the court's responsibility to determine the validity of the exculpatory clause.

Provider's Name:

Case No. ____-____-TP-____

Case No. ____-____-TP-TRF

Issued: (Date Filed)

8/96

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of the Implementation :
of the Pay Telephone Reclassification :
and Compensation Provisions of the :
Telecommunications Act of 1996. :

CC Docket No. 96-128

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**EXECUTIVE SUMMARY
OF THE
COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

The Public Utilities Commission of Ohio (PUCO) submits that certain aspects of the Federal Communication Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) concerning pay telephone reclassification and compensation issues are overly broad and unnecessarily intrusive upon the interests of states. The PUCO maintains that the FCC can better fulfill its obligations under Section 276 by modifying its tentative conclusions and establishing a dual regulatory approach which better promotes the cooperative regulatory paradigm envisioned by Congress in passing the Telecommunications Act of 1996 (1996 Act). The PUCO suggests that this cooperative regulatory paradigm would be best established by the FCC adopting broad regulatory guidelines while affording the states with substantial deference in determining the best approach to satisfy the federal goals.

The PUCO advocates the FCC's proposal that would permit the states to continue to set coin rates for local payphone calls according to factors within the states' discretion. As an alternative to allowing the states to continue establishing local payphone rates according to factors within our discretion, the PUCO urges the FCC to adopt the cooperative regulatory paradigm. A cooperative approach will satisfy

the principles envisioned by Congress in passing the 1996 Act and will further recognize the legitimate differences among the individual states.

Should the FCC determine to adopt standards affecting intrastate calls, the PUCO urges the FCC to adopt its carrier-pays proposal which builds upon the existing per-call mechanism. Under a set use fee, these payments will be spread among a vast number of payphone patrons through their individual telephone bills. The PUCO also recommends that the FCC adopt carrier-pays as the sole compensation method to apply to all dial-around calls.

The PUCO is not entirely opposed to the FCC's proposal to classify incumbent local exchange company (ILEC) pay telephones as deregulated customer premise equipment (CPE). The PUCO maintains, however, that Section 276 of the 1996 Act does not specifically mandate the deregulation of CPE. In the event the FCC elects to exceed the requirements of the 1996 Act by deregulating ILEC payphone equipment, the FCC should also exceed the 1996 Act's requirements by requiring all Tier 1 LECs to establish structurally separate subsidiaries.

The PUCO cannot embrace the FCC's proposal to classify LEC-owned pay stations as CPE until it has had the opportunity to review thoroughly the specific accounting treatment of the asset transfer, which the FCC notes will be addressed in a future separate proceeding.

The PUCO generally agrees with the FCC's proposal to require ILECs to provide to PSPs, on a nondiscriminatory tariffed basis, all functionalities used in a LEC's delivery of payphone services. The PUCO believes, however, that this requirement should be made of all local service providers, including new entrants into the local exchange marketplace, and not just ILECs.

The PUCO maintains that many state commissions are capable and willing to review the LECs, located in their respective states, proposed unbundled payphone

rates and associated cost support, to ensure that the rates are not priced in a discriminatory, anti-competitive fashion.

Regarding public interest payphones, of particular concern to the PUCO is the need for access to emergency services, health care facilities, public text telephones for the hearing-impaired, and law enforcement, particularly in low income neighborhoods and rural areas. The PUCO supports the FCC's proposal deferring to the states the determination as to which payphones should be treated as public interest payphones. The PUCO submits that the states are in the best position to determine the definition of a public interest payphone, the need for such phones, and the funding mechanism to maintain public interest payphones.

The PUCO shares the concerns of the FCC regarding letterless keypads. The PUCO agrees with the FCC that letterless keypads are inconsistent with the FCC's earlier rulings regarding access to the operator service provider of a caller's choice.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of the Implementation :
of the Pay Telephone Reclassification : CC Docket No. 96-128
and Compensation Provisions of the :
Telecommunications Act of 1996. :

**COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION AND BACKGROUND

The Public Utilities Commission of Ohio (PUCO) hereby submits its comments pursuant to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96-128 (In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996). The FCC's NPRM in this investigation proposes rules pursuant to the directives of Section 276 of the Telecommunications Act of 1996 (1996 Act).

Section 276 of the 1996 Act directs the FCC, among other things: to promulgate rules that ensure that all payphone owners are compensated for calls originated on their payphones; to discontinue all intrastate and interstate subsidies from basic local exchange service; and to prescribe a set of nonstructural safeguards for Bell Operating Company (BOC) payphone service equal to those adopted by the FCC in its Computer III investigation (CC Docket No. 90-623). Section 276 of the 1996 Act also requires the FCC, in this proceeding, to determine whether public interest payphones (i.e., payphones provided in the interest of public health, safety, and welfare, in locations where there normally would not be a payphone) should be maintained.

The FCC's NPRM also proposes other miscellaneous payphone rules not mandated by the 1996 Act.

By way of these comments, the PUCO submits its responses to following issues: (1) compensation for completed intrastate and interstate calls originated at payphones; (2) the reclassification of local exchange company (LEC) payphones as deregulated customer premise equipment (CPE); (3) nonstructural safeguards for the BOCs' provision of payphone service; (4) the establishment of public interest telephones; (5) and letterless keypads on telephones. Comments in this proceeding are due at the FCC on June 27, 1996.

DISCUSSION (NPRM SECTION III)

Overview of Commission's Authority

Section 276 of the 1996 Act requires that all payphone providers, whether independents or incumbent local exchange carriers (LECs) (collectively referred to as payphone service providers (or PSPs)), are to be "fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation." The 1996 Act also directs the FCC to "discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a [per-call] compensation plan."

In order to effectuate these goals, the 1996 Act directs the FCC, within nine months of enactment, to take all actions necessary, including reconsideration, to prescribe regulations on these matters. The FCC has set forth its tentative conclu-

sions on guidelines to implement the provisions of the 1996 Act. The PUCO welcomes the opportunity to comment on these tentative conclusions.

The PUCO submits that certain aspects of the FCC's NPRM concerning pay telephone reclassification and compensation issues are overly broad and unnecessarily intrusive upon the interests of states, in violation of the spirit of the traditional separation of regulatory authority over interstate and intrastate telephone services by the FCC and the states, respectively. In enacting the 1996 Act, Congress specifically did not repeal 47 U.S.C. 152(b) (Section 152(b)), and the 1996 Act does not confer intrastate jurisdiction upon the FCC. Therefore, the FCC should make every effort to perform its responsibilities under the 1996 Act while deferring to individual state's jurisdiction whenever possible to promote the cooperative regulatory approach envisioned by Congress and set forth statutorily by Section 152(b).

Individual states have traditionally regulated local payphone service, and have the benefit of that experience to tailor regulation particularly suited to their individual jurisdictions. For example, the PUCO has considered the issue of whether an end user should be required to pay a charge for directory assistance, and the PUCO has made the policy determination that good public policy dictates that no charge be required. The PUCO maintains that the FCC can better fulfill its obligations under Section 276 by modifying its tentative conclusions and establishing a dual regulatory approach which better promotes the cooperative regulatory paradigm envisioned by Congress in passing the 1996 Act. The PUCO suggests that this cooperative regulatory paradigm would be best established by the FCC adopting broad regulatory guidelines deferring to the states, such as Ohio, to determine the best approach to satisfy the federal goals. Under such an approach, the FCC would still have the authority, upon a clear demonstration that a state's decision was inconsistent with the 1996 Act, to take action to fulfill its obligations under federal

law, while, at the same time, affording states, like Ohio, that have established payphone policies with the ability to address their unique circumstances.

Ohio's recommended approach would also prospectively recognize the legitimate differences among states relative to technologic, geographic, and demographic conditions. Ohio's approach would further preserve, as addressed below, the substantial work already done by states concerning local payphone issues. For instance, the PUCO has already addressed (1) compensation for intrastate operator service (0+ and 0-) calls; (2) minimum operating standards for both local exchange carrier (LEC) owned and privately owned payphones; (3) LEC imputation for payphone services; and, (4) policy concerns surrounding the provision of directory assistance service to end users and private payphone owners (PPOs).

Scope of Calls Covered by this Rulemaking

The FCC maintains that most payphone-originated calls fall within one of the following categories: (1) coin calls; (2) directory assistance calls; (3) operator service (0+ and 0-) calls; (4) access code calls (*e.g.*, using 10XXX codes and 1-800 or 950 carrier access numbers); and (5) subscriber 800 calls. Each category can be further subdivided into local, intraLATA toll, intrastate interLATA, interstate interLATA, and international calls. NPRM at Paragraph 15.

Compensation Methodologies (NPRM at Paragraphs 16-22)

The FCC seeks comment on what constitutes "fair" compensation and how it should "ensure" that each PSP receives compensation for calls originated from the providers' payphones. The FCC tentatively determines that, because private payphone providers and non-BOC LECs receive compensation at the current time for

0+ calls and because competition ensures "fair" compensation, the FCC need not prescribe per-call compensation for 0+ calls. The FCC also concludes that it should determine fair compensation for all intrastate and interstate access code calls, subscriber 800 and other toll-free number calls, debit card calls, and international calls.

The NPRM further tentatively concludes at paragraphs 19-22 that Section 276 requires the FCC to ensure that PSPs receive fair compensation for each interstate and intrastate local coin sent-paid call and that the 1996 Act expressly preempts inconsistent state regulations. Local sent-paid calls include, according to the FCC, local coin calls, intrastate coin-paid toll services, and "411" directory assistance calls. The Commission acknowledges that it has a range of options through which it might exercise its jurisdiction with respect to local sent-paid calls and seeks comments on those options. The first option would be to set a nationwide local coin rate for all calls originated at payphones. Another option would be to adopt specific national guidelines that states would use to establish a local rate to ensure PSPs receive fair compensation. The third option would be for the states, in the first instance, to continue to set the coin rates for local payphone calls according to factors within the states' discretion.

Notwithstanding the legal arguments against a nationwide local coin rate, the PUCO advocates adoption by the FCC of the third option which is for the states to continue setting the coin rates for local payphone calls according to factors within the states' discretion. As acknowledged in the NPRM, the states, including Ohio, have traditionally had a significant interest in establishing rates for local payphone calls, including directory assistance calls. NPRM at 22. Historically, the PUCO has established the rates for a local payphone call (directory assistance calls will be addressed below) through a rate proceeding in which all of the involved companies' expenses and revenues have been examined. Currently, the largest LECs in Ohio are authorized to charge \$.25 for a local coin-sent call. The majority of private pay-

phones are located in the largest LECs' service territories and, therefore, are authorized to charge \$.25 for a local coin-sent call as well. Assuming the PPO pays the serving LEC \$.08 for carrying the local call, this leaves the PPO with \$.17, and still ensures, in our opinion, fair compensation. Absent a regulatory proceeding in which the PPO may intervene, this local rate, and thus the PPO's margin, may not lawfully be changed. As further support for the argument that PPOs are currently receiving adequate compensation for the usage of their payphones, we would point out that the number of privately owned payphones in Ohio has nearly doubled in the past five years. Therefore, the PUCO believes that the states should maintain this flexibility.

The PUCO has also thoroughly considered, on several occasions, the issue of directory assistance at payphones and has consistently determined that sound public policy dictates that payphone patrons not be charged for making directory assistance calls. Several factors substantiate this public policy decision. First, the four largest LECs in Ohio (which represent over 90 percent of the access lines) do not charge private payphone owners for directory assistance calls. Thus, the PPO incurs no cost for providing directory assistance to end users. Because, at least in Ohio, there is no cost to the PUCO for both access and usage of directory assistance by its customers, the issue of compensation becomes moot. In addition, in most instances the end user, after utilizing directory assistance, will immediately use the directory assistance information to place a call over that same payphone. This represents, in our opinion, fair compensation for the use of the payphone. Next, in lieu of having to maintain current directories at their paystations, which was perhaps the most frequent violation noted by our compliance department when investigating payphone locations, the PUCO has determined, as a public policy matter, that directory assistance should be available without charge to payphone patrons and PPOs. The final and perhaps most important rationale for maintaining directory assistance without

charge concerns that portion of the public which relies upon paystations and directory assistance. Those persons include low income persons not having a telephone, transient persons, illiterate persons, visually handicapped persons, and travelers. For these people, access to directory assistance is a necessity.

As an alternative to allowing the states to continue establishing local pay-phone rates according to factors within our discretion, the PUCO urges the FCC to adopt the cooperative regulatory paradigm set forth above. Not only will such a cooperative approach satisfy the principles envisioned by Congress in passing the 1996 Act, but such an approach will also recognize the legitimate differences among states.

Entities Required to Pay Compensation (NPRM at Paragraphs 24-28)

The FCC further seeks comment on two industry proposals addressing who should pay compensation for usage of payphones. The first option is a "carrier-pays" proposal which builds upon the per-call mechanism adopted for interstate access code calls in CC Docket No. 91-35 (Second Report and Order, 7 FCC Rcd at 3259). If this carrier-pays mechanism were adopted, the interexchange carrier (IXC) receiving a call from a payphone would be required to remit a per-call charge to the provider of the payphone. Each would decide independently how to recover this cost. The second option is a "set use fee" that the IXC could bill and collect from the end user. The fee would then be remitted to the PSP. The FCC tentatively concludes that it should adopt the "carrier-pays" compensation proposal which builds upon the existing per-call compensation mechanism. The FCC also seeks comment on whether one method of compensation that applies to all dial-around calls should be adopted.

The legal arguments against a one-size-fits-all approach notwithstanding, should the FCC determine to adopt standards affecting intrastate calls, the PUCO urges the FCC to adopt its carrier-pays proposal which builds upon the existing per-call mechanism. As noted in the NPRM, transaction costs to implement per-call compensation will be best minimized through aggregated payments to payphone providers which is afforded by a carrier-pays mechanism. Otherwise, under a set use fee, these payments will be spread among a vast number of payphone patrons through their individual telephone bills. The PUCO also recommends that the FCC adopt carrier-pays as the sole compensation method to apply to all dial-around calls.

Reclassification of Incumbent LEC-Owned Payphones (NPRM Paragraphs 41-49)

Section 276(b)(1)(B) of the 1996 Act requires the FCC to "discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of the enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues in favor of a per-call compensation plan."

To effectuate the 1996 Act's mandate that access charge payphone service elements and payphone subsidies be discontinued, the FCC tentatively concludes that it should treat LEC payphones as unregulated, detariffed CPE. NPRM at Paragraph 42. The FCC further tentatively concludes that incumbent LECs should be required to provide to PSPs on a nondiscriminatory tariffed basis, all functionalities used in a LEC's delivery of payphone services. NPRM at Paragraph 42. The FCC notes that requiring central office services to be made available to all private payphone owners (PPOs) will eliminate LEC cost advantages. NPRM at Paragraph 43. These central office services must be available to PSPs under a nondiscriminatory, public tariffed offering. The FCC further requests comment as to whether the LECs' fraud protec-

tion services should be made available to PSPs as an unbundled service offering. NPRM at Paragraph 48.

The PUCO is not entirely opposed to the FCC's proposal to classify LEC pay telephones as deregulated CPE. The PUCO's ultimate support of the FCC's rules adopted in this investigation, however, is contingent upon the FCC's embracing the PUCO's recommendations on these matters (particularly its structurally separate subsidiary proposal, which is discussed in detail later in these comments). Moreover, the PUCO also cannot embrace the FCC's proposal to classify LEC-owned pay stations as CPE until it has had the opportunity to review thoroughly the specific accounting treatment of the asset transfer, which the FCC notes will be addressed in a future separate proceeding. NPRM at Paragraph 49.

With minor exceptions, the PUCO agrees with the FCC's proposal to require ILECs to provide to PSPs, on a nondiscriminatory tariffed basis, all functionalities used in a LEC's delivery of payphone services. The PUCO believes, however, that this requirement should be made of all local service providers, including new entrants into the local exchange marketplace, and not just incumbent LECs. The PUCO also believes that these functionalities should include LEC-provided fraud protection services.

The FCC notes that it required in its Computer II investigation that, in order to prevent cross-subsidization, CPE should be unbundled from its underlying transmission. NPRM at Paragraph 44. The FCC further notes that its proposed classifications of payphones as CPE consistent with Computer II is not intended to imply that the FCC will permit the LEC provision of payphone services through only a structurally separate affiliate. NPRM at Paragraph 44.

In the event the FCC elects to classify ILEC payphone equipment as unregulated CPE, the PUCO maintains that all Tier 1 LECs should be required to establish structurally separate subsidiaries for the provision of end user payphone services.

(The PUCO's rational for subjecting all Tier 1 LECs to structural separation requirements is discussed later in these comments.) The PUCO believes that such a mandate will satisfy both the pro-competitive and deregulatory requirements of the 1996 Act. Specifically, the 1996 Act's demands for deregulation will be realized by reclassifying regulated ILEC payphone equipment as deregulated CPE. Additionally, the pro-competitive aspect of the 1996 Act will be equally realized, since a separate subsidiary requirement will promote an increased level of competition by ensuring that the LECs' regulated services are not improperly subsidizing the LECs' unregulated payphone ventures. After competition proliferates in the provision of end user payphone service this regulatory safeguard may no longer be required.

Consistent with its recommendation on this matter, the PUCO notes that as a precondition to its approval of Ameritech Ohio's application to provide intrastate out-of-region pay telephone services (Case No. 95-461-CT-ACE), the PUCO required the company to provide these services through an unregulated separate subsidiary. Moreover, the PUCO notes that its separate subsidiary recommendation in this docket is consistent with its comments to the FCC in responding to similar separations issues proposed in CC Docket Nos. 96-21 and 96-61, which were filed with the FCC on March 13, 1996, and April 8, 1996, respectively.

In addition, the PUCO maintains that Section 276 of the 1996 Act does not specifically mandate the deregulation of CPE. The FCC's proposal to deregulate LEC-owned payphone equipment is based on an interpretation of the 1996 Act. The PUCO maintains that the FCC could meet the requirements of Section 276 by requiring the ILECs to simply detariff (as opposed to deregulate) their payphone equipment and to impute regulated unbundled charges for central office, transmission, installation, and maintenance services. In the event the FCC elects to exceed the requirements of the 1996 Act by requiring that ILEC payphone equipment be classified as unregulated CPE, the PUCO submits that the FCC should require Tier 1 LECs

to establish structurally separate subsidiaries to protect both customers subscribing to regulated services and payphone competitors from the potential of ILECs improperly cross-subsidizing their unregulated payphone services with regulated revenues.

The FCC requests comment on whether ILECs provision of coin transmission services on an unbundled basis should be treated as a new service under its rules. NPRM at Paragraph 46. The FCC indicates that its new services test "places a flexible, cost based upper bound on new service prices to guard against unreasonably high rates and, by requiring that prices exceed direct costs, also establishes a price floor, ensuring that prices are not predatory." NPRM at Paragraph 46.

The PUCO maintains that many state commissions, including Ohio, are capable and willing to review the LECs', located in their respective states, proposed unbundled payphone rates and associated cost support, to ensure that the rates are not priced in a discriminatory, anti-competitive fashion. The PUCO recently adopted the following pricing standards, based upon the provisions of the 1996 Act, for unbundled network elements to which LEC-provided payphone services would be subject: "Prices for interconnection and unbundled network elements shall be set in order to allow a LEC to recover its LRSIC for providing interconnection and unbundled network elements, and a reasonable contribution to the joint and common costs incurred by that LEC." The profit level included in the LRSIC shall be the LEC's forward-looking cost of capital." The PUCO also requires a contribution to common overhead equal to 10 percent of the LRSIC and joint cost allocation for a particular service. PUCO Case No. 95-845-TP-COI, Finding and Order adopted on June 12, 1996. A copy of the PUCO's Finding and Order and local competition rules is attached.

The FCC also seeks comment on the location of the demarcation point for reclassified LEC payphones. NPRM at Paragraph 47. In the event the FCC classifies LEC payphone equipment as deregulated CPE, the PUCO maintains that what is

deregulated should include all wiring and CPE on the customers' side of the point of demarcation between network wiring and inside wiring consistent with the FCC's rules adopted in its Report and Order in CC Docket No. 88-57 (In the Matter of Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network).

Since LEC payphone costs are included in the carrier common line charge (CCLC), the FCC tentatively concludes that ILECs must reduce their CCLCs by an amount equal to the interstate allocation of costs currently recovered through those charges. NPRM at Paragraph 51. The PUCO agrees with the FCC's tentative conclusion to reduce ILECs' CCLC by an amount equal to the level of payphone subsidies currently included in the charge. The PUCO informs the FCC that ILECs currently operating in Ohio are required to assess intrastate access charges that are equal to, and in some cases below, their interstate access rates. As a result, any reduction in the interstate CCLC to take into consideration the removal of payphone subsidies would be automatically reflected by Ohio's LECs in their intrastate access tariffs.

The FCC tentatively concludes that, to avoid discrimination among payphone providers, the subscriber line charge (SLC) should apply to the subscriber lines that terminate at both LEC and competitive payphones. NPRM at Paragraph 53. The PUCO agrees with the FCC that, to place competitive payphone providers on equal footing with the LECs' nonregulated payphone services, the SLC should apply to both types of provider.

Nonstructural Safeguards for BOC Provision of Payphone Services (NPRM at Paragraphs 57-66)

The FCC notes that Section 276(b)(1)(C) of the 1996 Act directs the Commission to "prescribe a set of nonstructural safeguards for Bell Operating Company payphone service to implement the provisions of paragraphs (1) and (2) of

subsection (a), which safeguards shall, at a minimum, include nonstructural safeguards equal to those adopted in the Computer Inquiry III." Section 276(a) provides that a BOC "(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and (2) shall not prefer or discriminate in favor of its payphone services." NPRM at Paragraph 57. The FCC seeks comment on whether there are other structural safeguards that, while not explicitly specified in Computer III, should be applied to BOC payphones. NPRM at Paragraph 58.

As mentioned earlier in these comments, to ensure that the ILEC's regulated services are not improperly subsidizing their unregulated payphone services, the PUCO recommends that the FCC require all Tier 1 LECs to establish a structurally separate subsidiary for the provision of their payphone services, at least until such time as the level of competition in the provision of these services increases significantly. The PUCO believes that such a requirement would not be inconsistent with the requirements of the 1996 Act. In particular, as mentioned earlier in these comments, the 1996 Act does not specifically mandate the FCC to reclassify regulated payphone equipment as deregulated CPE. The FCC's proposal on this matter is based on an interpretation of Section 276. The PUCO proposes that, as an alternative to requiring the deregulation of ILEC payphone equipment, the FCC should adopt a rule that would require the ILECs to detariff their payphone equipment and also be required to meet an imputation test for the purchase of their own tariffed, unbundled payphone services. If the FCC, through its reading of Section 276 of the 1996 Act, interprets it to permit the deregulation of LEC-owned payphone equipment, the PUCO believes that a structurally separate subsidiary requirement is necessary. Expressed another way, if the FCC interprets Section 276 to require only the detariffing of LEC-owned payphone equipment, the PUCO maintains that a structurally separate subsidiary is unnecessary. Moreover, the PUCO does not believe a struc-

tural separation requirement is in conflict with the 1996 Act if the FCC elects to deregulate LEC payphones, since the 1996 Act did not specifically call for deregulation of these services.

The PUCO maintains that structural separation requirements should apply to large LECs other than the BOCs. In particular, the PUCO recommends that all Tier 1 LECs (*i.e.*, those LECs with interstate revenues in excess of \$100 million) should be required to establish structurally separate affiliates for the provision of end user payphone service. The PUCO maintains that it would not be unduly burdensome for companies of this size to establish a separate subsidiary to provide deregulated payphone services. In Ohio, Tier 1 LECs currently include the following four companies: Ameritech, Cincinnati Bell Telephone Company, GTE Inc., and Sprint-United.

In the event the FCC elects to allow ILECs to provide end-user payphone services on an unregulated basis, and further does not adopt the PUCO's structural separation recommendation, the PUCO submits that the FCC's Computer Inquiry III nonstructural safeguards should apply to all ILECs providing these services and not just the BOCs.

Establishment of Public Interest Payphones (NPRM at Paragraphs 76-85)

The FCC notes that Section 276(b)(2) of the 1996 Act directs the FCC to "determine whether public interest payphones, which are provided in the interest of public health, safety and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably." NPRM at Paragraph 76.

The FCC seeks comments on "whether it would be in the public interest to maintain payphones provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone." NPRM at Paragraph 77.

The PUCO believes public interest payphones should be maintained, as noted by the FCC in its NPRM, "because payphones are used by some residents as a substitute for local telephone service, in addition to being used by visitors and retail customers". NPRM at Paragraph 22.

Of concern to the PUCO is the need for access to emergency services, health care facilities, public text telephones for the hearing-impaired, and law enforcement, particularly in low income neighborhoods and rural areas. In determining whether public interest payphones should be maintained, the FCC seeks comments "on a range of options for maintaining public interest payphones." In its NPRM, the FCC lists three proposed options:

1. The FCC would prescribe federal regulations for the maintenance of these payphones. The FCC seeks further comment on "whether and how this approach would service the public interest, and on whether Section 276 requires the Commission to assume this responsibility". NPRM at Paragraph 78.
2. The FCC would establish national guidelines for public interest payphones. The FCC seeks comment on "whether there are any state initiatives or programs concerning public interest payphones that the Commission could use a model for national guidelines." NPRM at Paragraph 79. In determining whether to establish national guidelines for public interest payphones, the FCC seeks comment on "what is to be considered a 'public interest payphone'". The FCC seeks further comment on whether a "public interest payphone" should be defined as "a payphone (1) that operates at a financial loss, but also fulfills some public policy objective, such as emergency access; and (2) even though unprofitable by itself, is not provided for a location provider with whom the PSP has a contract. Under this definition, many payphones that fulfill important public policy objectives would not be included because they would be paid for, in the form of lower commission payments, by the entity that is requesting that a payphone be placed in a particular location to fulfill a public policy

objective. This proposed definition would not necessarily decrease the number of payphones in existence fulfilling public policy objectives, but would require the entities that most directly benefit from these low profitability payphones to assume the cost of their availability." The FCC also seeks comment generally on this possible definition and that parties may specify whether the definition should be narrowed, broader, or more specific. NPRM at Paragraph 80.

3. The FCC would defer to the states to determine, pursuant to their own statutes and regulations, which payphones should be treated as "public interest payphones." The FCC seeks comment on "whether it would be consistent with the statute and better serve the public interest to allow the states to develop their own guidelines regarding which payphones are "public interest payphones". NPRM at Paragraph 81.

With regard to a funding mechanism to support public interest payphones "fairly and equitably," the FCC also requests comment on "whether such a mechanism should be handled in conjunction with how public interest payphones are maintained, whether through federal regulations, federal guidelines for the states, or by the states themselves." NPRM at Paragraph 82.

The PUCO agrees with the FCC's proposed option #3 above, which defers to the states to determine which payphones should be treated as public interest payphones. Individual states have different demographics and unique calling needs and are better qualified to adopt standards that recognize these differences because they are more familiar with the needs of their citizens. Currently, in its "Minimum Local Exchange Company Telephone Service Standards," the PUCO already requires all local exchange companies to maintain at least one public coin-operated telephone in each of their exchanges. Such telephones are required to be located in prominent locations, lighted at night, and available to the public seven days a week, twenty-four hours a day. In addition, these payphones must be hearing aid compatible and provide access to the operator, "9-1-1" emergency service (where available) and local directory assistance free without the use of a coin. The PUCO intends to

continue to further explore the need for public interest payphones as we revise our state minimum telephone service standards. The PUCO believes that states are in the best position to determine the definition of a public interest payphone, the need for such phones, and the funding mechanism to maintain public interest payphones in order to comply with Congress' mandate. Given the extensive state regulatory requirements on payphones which have been in place for many years, a *de novo* FCC determination of what constitutes a "public interest" payphone would be a waste of the FCC's limited resources. Moreover, no matter how well intended, such a rulemaking on a nationwide basis would not necessarily lead to a better result than the existing regulations on payphone instruments which the states have had in place for many years and which have generally worked well to protect the public while responding to unique state and regional needs.¹

The FCC notes in its NPRM that at least two distributors of payphone equipment have been promoting letterless keypads. The FCC expresses concern that "use of letterless keypads may frustrate the intent of Congress, as expressed in the Telephone Operator Consumer Services Improvement Act (TOCSIA), to permit callers to reach the operator service provider (OSP) of their choice from payphones." The FCC is additionally concerned "that these keypads ultimately frustrate congressional intent, as expressed in the 1996 Act, "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public." NPRM at Paragraph 85.

¹ The PUCO notes that it has developed a procedure with local municipalities establishing a waiver process of the requirement for payphones handling incoming calls in high drug trafficking areas. Because of the very specialized and localized characteristics associated with these requests, we do not feel that the FCC should inject itself into an area that the state commission has delegated to local governments with concurrence from the state. Indeed, the PUCO has found it preferable to delegate this decision in the first instance to local authorities rather than attempting to craft a "one size fits all" statewide rule. The crafting of a nationwide rule designating which phones would be afforded this treatment would be even more difficult and could remove the discretion needed by local safety and government authorities.